

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 33/Chd/2018
निर्धारण वर्ष / Assessment Year : 2007-08

Nec Pharmaceutical, C/o Surinder Babbar, FCA Babbar & Co. Babbar Bhawan, Green Tower, Sector-1, Parwanoo- 173220(H.P)	बनाम	The ITO Ward, Parwanoo
स्थायी लेखा सं./PAN NO: AAFN2932D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR
सुनवाई की तारीख/Date of Hearing : 21/05/2024
उदघोषणा की तारीख/Date of Pronouncement : 27/05/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Faridabad dt. 25/10/2017 pertaining to Assessment Year 2007-08.

2. At the outset, it is noted that the case of the assessee was earlier disposed off vide order dt. 04/10/2018 on account of non-prosecution and subsequently vide order dt. 07/11/2019 in Misc. Application No. 17/Chd/2019, the same was recalled and the matter was fixed for hearing on 20/11/2019 and it was stated that no separate notice of hearing shall be issued to the parties as next date of hearing was announced on the date of hearing itself in the presence of the parties. Thereafter, from the perusal of the record, it is noted that the matter has been fixed on number of occasions. However for one reason or the other, the hearing could not took place and the matter was adjourned from time to time at the request of the assessee and thereafter when the matter came up for hearing on 21/05/2024, again there was no representation on behalf of the assessee nor was any adjournment application filed. Given the fact that the appeal was filed way back in the year 2018 and the assessee doesn't seem

interested in the matter, we deemed it appropriate that no useful purpose would be served in adjourning the matter any further and it was decided to hear the Ld. DR and decide on basis of material available on record.

3. Ground No. 1 of the assessee's appeal is general in nature, it doesn't require any specific adjudication.

4. In Ground No. 2, the assessee has challenged the passing of the assessment order under section 144 of the Act and in Ground No. 3, the assessee has challenged the action of the Ld. CIT(A) in sustenance of estimation of net profit @ 12% as against 22% declared by the assessee as eligible for deduction under section 80IC of the Act and treating the balance profit of Rs. 12,53,765/- as income from undisclosed sources.

4.1 In this regard, briefly the facts of the case are that the assessee filed its return of income declaring NIL income on 16/11/2007 after claiming 100% deduction under section 80IC of the Act amounting to Rs. 30,50,460/-.

4.2 During the course of assessment proceedings, the assessee was asked to give details of manufacturing process and also the justification with regard to fulfillment of condition for claim of deduction under section 80IC of the Act and the submissions so filed by the assessee were considered by the AO and the AO has recorded the findings of the assessee fulfilling the requisite conditions for claim of deduction under section 80IC of the Act.

4.3 Regarding the quantum of deduction which the assessee was eligible for deduction under section 80IC of the Act, the AO observed that the assessee has declared total sales of Rs. 1,24,60,268/-, G.P. Rate of 32.35% and N.P. Rate of 24.41% as compared to G.P. of 13.21% and N.P. of 4.55% for A.Y 2005-06 and G.P. of 11% and N.P of 5.41% for A.Y. 2006-07. Thereafter the assessee was asked to explain the increase in the N.P. Rate as compared to the previous years. The submissions so filed by the assessee were considered however the same were not found acceptable and the AO has stated that in absence of concrete documentary evidence in support of the submissions made by the assessee and the addresses of sundry debtors and creditors,

the correctness of book results did not stand proved and he, thereafter proceeded to assess the income under section 144 of the Act.

4.4 It was further stated by the AO that the G.P. has increased astronomically from 11% to 32.35% as compared to earlier years despite decrease in sales by almost 50% and the onus was on the assessee to prove the increase with documentary evidence which the assessee failed to do so despite number of opportunities allowed to it.

4.5 It was further stated by the AO that the assessee has consistently shown profits in the range of 4.5% to 5.5% and no concrete evidence has been submitted for the abnormal rise in profit and therefore taking into consideration the fact that the assessee did not have to pay any interest to the bank as compared to the earlier years and sale price of some of its products have increased and the clientele have undergone change, the profit from business was estimated @ 12% of the sale and profit of Rs. 14,95,232/- was determined and which was treated as exempt under section 80IC of the Act and accordingly, the remaining profit of Rs. 12,53,765/- was treated as assessee's income from undisclosed sources.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has sustained the said addition and the relevant findings are contained at para 13 to 17 of the impugned order and the contents thereof read as under :

"13. In the present appeal, two issues need to be adjudicated upon. The first is that whether the AO was correct in rejecting the books of account of the appellant and estimating the net profit of the appellant and second is whether the net profit of the appellant worked out by the AO is correct.

14. The basic contention of the AO has been that the complete books of account along with bill books, were not produced before the AO during the course of assessment proceedings and secondly, that the addresses of the sundry debtors and sundry creditors were not made available to the AO. The AO has held that in the absence of such details it was not possible to ascertain the true profits of the appellant. The AO has subsequently held that the appellant being a exempt unit u/s 80-IC has shown unusually high profits during the year.

15. On the other hand, the learned AR has been consistently taking a stand that all the account books of the appellant were made available with the AO and consequently, the AO had no right to frame the assessment on the best judgement basis. As stated earlier, the written submissions of the appellant were sent to the AO for his comments, not only were the comments of the AO sought but the AO was directed to make specific enquiries and to pursue the books of account. Once again, the AO in his remand report has specifically pointed out that the bill books and other details were not furnished before the

AO during remand proceedings to enable the AO to complete the enquiries. On the other hand, the learned AR in his rejoinder has again submitted that books of account were produced in CD format before the AO and the same CD was once again produced by the learned AR along with his reply dated 05.02.2013 before the learned CIT (A) (my predecessor).

16. During the course of appellate proceedings, I discovered that the CD furnished by the learned AR vide his letter dated 05.02.2013 had not been opened and the contents of the same has not been perused. To verify the contention of the learned AR, I have opened the CD furnished by the learned AR and perused the contents of the same. I find that the books of account for the relevant year in terms of ledger and cash book have been furnished by the learned AR. However, there are no bill books in the CD. Moreover, I have also observed that the ledger accounts in the CD do not provide the complete addresses of the debtors and creditors. Thus after careful perusal of the assessment order, remand report and the rejoinder to the remand report, I am of the firm opinion that the AO is correct in holding that the complete books of account were not produced before the AO either during the course of assessment proceedings or during the remand proceedings. In such circumstances, I find that the AO was correct in estimating the income of the appellant based on parameters adopted by the AO.

17. The second question needs to be considered that whether the AO was correct in estimating the profit of the appellant at 12% net profit rate and rest of the profit amounting to Rs.12,53,765/- may be treated as undisclosed income of the appellant. This issue has been discussed by the AO in Para 4 of the assessment order. The anomalies in the GP and the NP of the earlier years as compared to the GP and NP of the year under consideration is elaborately discussed by the AO in Para 3 and 4 of the assessment order. The fact of the matter is that the GP from the earlier year has increased from 11% to almost 32% despite decrease in the sale by almost 50%. Prior to this year, the appellant had shown net profit in the rate of 4.5 to 5.5%, which has suddenly jumped to 24% during the year under consideration. The appellant was provided sufficient opportunities to explain this sudden increase, however the explanation submitted by the appellant could not be verified by the AO in the absence of complete records. Thus, based on the entire facts of the case, the AO has held that the business profit of the appellant for the year is estimated at 12% and rest of the income has not been taken as exempt u/s 80IC of the Income Tax Act, 1961 and was treated as income from undisclosed sources. After perusing the assessment order, the remand report and the reasons as discussed in the earlier pages of this order, I find that the AO is right in holding the estimated profit of the appellant at 12% and thus I see no reason to interfere with the order of the AO and these grounds of the appellant are dismissed"

6. Heard the Id DR and carefully perused the material available on record. Firstly, regarding the matter relating to rejection of the books of accounts and passing of the order u/s 144 of the Act, we find that during the course of assessment proceedings, the AO has returned a finding that the complete books of account along with bill books were not produced along with the addresses of the sundry debtors and sundry creditors and in the absence of such details it was not possible to ascertain the true profits of the appellant. Further, the AO has carried out comparative analysis of turnover and net profits shown in the earlier years and has held that the assessee has shown unusually high profits during the year inspite of reduction in turnover and whole of which has

been claimed as exempt u/s 80IC of the Act. During the appellate proceedings, the Id CIT(A) has allowed further opportunity to the assessee to produce the necessary books of accounts and the AO was directed to make specific enquiries and to pursue the books of account and the AO in his remand report has pointed out that the bill books and other details were again not furnished before the AO during remand proceedings to enable the AO to complete the enquiries. The Id CIT(A) also examined a CD submitted by the assessee and stated that the books of account for the relevant year in terms of ledger and cash book have been found contained in the CD, however, there are no bill books in the CD and again, complete addresses of the debtors and creditors have not been provided. Considering the same, the Id CIT(A) has confirmed the action of the AO in terms of rejection of books of accounts and passing of the order under section 144 of the Act. There is nothing on record to rebut the findings of the Id CIT(A) and we find that the Id CIT(A) after due perusal of the assessment order, and after allowing opportunity to the assessee during the appellate proceeding, calling for the remand report from the AO and the rejoinder to the remand report submitted by the assessee has rightly upheld the findings of the AO in terms of rejection of books of accounts and estimation of net profits.

7. Regarding estimation of net profit @ 12%, the Id CIT(A) has recorded the finding that the GP from the earlier year has increased from 11% to almost 32% despite decrease in the sale by almost 50%. Prior to this year, the appellant had shown net profit in the rate of 4.5 to 5.5%, which has suddenly jumped to 24% during the year under consideration. The appellant was provided sufficient opportunities to explain this sudden increase; however the explanation submitted by the appellant could not be verified by the AO in the absence of complete records. Thus, based on the entire facts of the case, the AO has held that the business profit of the appellant for the year is estimated at 12% and rest of the income has not been taken as exempt u/s 80IC of the Income Tax Act, 1961 and was treated as income from undisclosed sources. There is nothing on record to rebut the said findings of the Id CIT(A) who has rightly appreciated and analysed the findings of the AO, who in turn has done the necessary comparative analysis of previous years and recorded the finding regarding abnormal increase in net profit inspite of reduction in sales/turnover during the year under consideration. We

therefore do not see any perversity in the findings of the Id CIT(A) and see no reason to interfere with the same and the said findings are hereby confirmed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 27/05/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar